

REMARKS

Claims 1-6, 9-14, and 17-26 are pending and stand rejected. The rejection has been made final. In view of the following remarks, the applicants respectfully request that the Examiner reconsider and withdraw the rejection.

REJECTIONS UNDER 35 U.S.C. §102

The Examiner rejected Claims 1-3 and 9-11 as being anticipated under §102(a) by a printed publication – an article in Forbes Magazine written by Kelly Barron and published on January 10, 2000 (Referred to as Barron). Barron is an article discussing various technological improvements made by UPS (United Parcel Service) following a 1997 drivers strike. In a response filed November 2, 2004, the Applicants argued that Barron does not teach the combination of elements and limitations required by Claims 1-3 and 9-11. Replying to those arguments, the Examiner admitted “If you look at it [claims 1-3 and 9-11] limitation by limitations [sic], one would be tempted to come to that conclusion but the fact remains that the concept being claimed is already covered by the UPS which provides worldwide delivery service.”

According to MPEP 2131, under §102, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference, so the Examiner is required, for each claim, to and address each element individually and combined. “A *prima facie* case is made out under 35 U.S.C. 102(a) if, within 1 year of the filing date, the invention, or an obvious variant thereof, is described in a ‘printed publication’ whose authorship differs in any way from the inventive entity unless it is stated within the publication itself that the publication is describing the applicant’s work.” MPEP 2132.01.

The Examiner’s rejection under §102(a) is based on Barron – a printed publication. The following is a quotation taken from the latest office action.

Claims 1-3 and 9-11 are rejected under 35 U.S.C. 102(a) as being anticipated by Kelly Barron, Logistics in Brown (1997 driver strike helped refocus and revitalize United Parcel Service), Forbes, January, 10, 2000, pg 78.

To suffice as prior art under §102(a), the Barron publication must expressly or inherently describe each element as set forth in each of Claims 1-3 and 9-11. By

the Examiner's own admission, looking at the claims limitation by limitation, one is "tempted" to reach a conclusion that Barron does not describe one or more elements as set forth in each of Claims 1-3 and 9-11. Nonetheless, the Examiner provides a blanket conclusion that "the concept being claimed is already covered by the UPS which provides worldwide delivery service." As Brown does not describe all of the claim elements as set forth in Claims 1-3 and 9-11, this blanket conclusion cannot be based on the contents of the Brown publication – the only support provided for the §102(a) rejection. Should the Examiner be basing this conclusion on another reference or another grounds for rejection, the applicant's respectfully request that the Examiner introduce factual support for the rejection giving the Applicant's an opportunity to respond.

Addressing the claims individually, Claim 1 is directed to a method for delivering goods and includes the following combination of elements and limitations:

1. transporting the goods to a specified location;
2. upon delivery, acquiring, from a positioning service, a physical location of the goods; and
3. recording the physical location to verify that the goods have in fact been delivered to the specified location.

Rejecting Claim 1, the Examiner relies on the following passages from Barron.

1. "Since UPS began shuttling parcels from Seattle department stores with a Model T Ford and a few motorcycles in the early 1900s; it has become an almost invisible hand in the U.S. economy (see chart). Gifts from grandma, sure, but today UPS is more about serving the small-lot shipping needs of a nation flowering with eat-and-sleep entrepreneurs."
2. "UPS used to be a trucking company with technology. Now it's a technology company with trucks."
3. "A big part of the new arithmetic is the huge technology commitment. UPS can electronically track those 13 million daily packages. What's that do for the shipper? Consider the traveling salesman in Boise waiting on some samples. Through a UPS arrangement with 3COM, he can click on the UPS shield on the latest Palm VII handheld computer, enter a UPS tracking number and immediately learn the whereabouts of his goods."

When it comes time to send them off to another destination, he goes back to his Palm VII and a cellular tower detects his location and directs him to the nearest dropoff."

4. "Those seemingly untechnical UPS drivers serve as a linchpin in the company's vast electronic tracking system. They tote a computerized clipboard called a DIAD (Delivery Information Acquisition Device), which houses an internal radio that simultaneously captures and transmits delivery information. Once a customer signs on the DIAD for a package, the information is relayed through the network. The sender can go onto UPS' Web site and learn that the package has been received even before the driver has gotten back behind the wheel of his truck. Messages also can be sent to the DIAD about traffic jams on a driver's route or when a customer needs an immediate pickup. Even after decades of traveling the same streets, UPS is using global positioning satellites along with parcel-volume data to remap delivery areas."

An inspection of the cited passages and the remainder of the publication reveals that Barron does not teach the combination of elements and limitations of Claim 1. Specifically nothing in Barron teaches, upon delivery, acquiring, from a positioning service, a physical location of the goods and recording the physical location to verify that the goods have in fact been delivered to the specified location. Barron merely mentions a device (DIAD) that simultaneously captures and transmits delivery information. Barron describes delivery information as nothing more than the recipients signature entered through the DIAD (an indication that the package has been delivered to some *unverified* location) and perhaps information about traffic jams or a pick-up notification. Barron's delivery information simply indicates that delivered goods have been received; that delivery information does not indicate the physical location at which the goods were received. Moreover, since the DIAD cannot be used to identify the physical location of the goods, it cannot record a physical location of those goods.

For at least these reasons, the Examiner's rejection of Claim 1 is improper. Claims 2 and 3 depend from Claim 1 and include all the limitations of that base Claim. For the same reasons the rejection of Claim 1 is improper, so are the rejections of Claims 2 and 3.

Claim 9 is directed to a computer program product for verifying proper delivery of goods to a specified location. The product includes a computer useable

medium having machine readable instructions for:

1. reading a ticket associated with the goods, the ticket having information representing delivery data for the goods;
2. acquiring from a positioning service a physical location of the goods; and
3. recording the physical location to verify that the goods have in fact been delivered to the specified location.

The Examiner rejected Claim 9 for the same reasons as Claim 1 even though Claim 9 requires a computer useable medium having instructions for performing an act not required by Claim 1 – that is – reading a ticket associated with the goods, the ticket having information representing delivery data for the goods. As such, the rejection of Claim 9 is improper.

Moreover, Barron simply does not teach the combination of elements of Claim 9 which not unlike Claim 1 requires that the media include instructions for acquiring from a positioning service a physical location of the goods; and recording the physical location to verify that the goods have in fact been delivered to the specified location. Thus, for the same reasons the rejection of Claim 1 is improper so is the rejection of Claim 9 and the rejections of Claims 10 and 11, which depend from Claim 9.

REJECTIONS UNDER 35 U.S.C. §103

To establish a *prima facie* case for obviousness under §103, the cited references must teach every element of the rejected claim and the Examiner must express some motivation to combine the references.

Claims 6 and 12: The Examiner rejected Claims 6 and 12 under §103 over the prior art references the Examiner cited in support of the rejection of Claims 1-3 and 9-12. Claim 6 depends from Claim 1 and includes all of its limitations. For at least the same reasons the rejection of Claim 1 is improper so is the rejection of Claim 6. Claim 12 depends from Claim 9 and includes all of its limitations. For at least the same reasons the rejection of Claim 9 is improper so is the rejection of Claim 12.

Moreover, Claims 6 and 12 add the following element "comparing the recorded location with the specified location and issuing an alert indicating discrepancies." The Examiner admits that this added element is not taught by the prior art references. Nonetheless, the Examiner concludes that:

It would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the positioning service's physical location and compared it with the location being scanned by the DIAD to check for and alert the delivery person about potential discrepancies for the explicit reasons set forth above.

The Examiner misstates the capabilities of the DIAD as described by Barron. There is no indication or suggestion in Barron, that the DIAD is capable of scanning a location let alone being capable of acquiring, from a positioning service, a physical location of the goods and then recording the physical location to verify that the goods have in fact been delivered to the specified location in the manner required. As noted above, Barron merely mentions that the DIAD simultaneously captures and transmits delivery information. Barron describes delivery information as nothing more than the recipients signature entered through the DIAD, an indication that the package has been delivered to some unverified and nondescript location, and perhaps information about traffic jams or a pick-up notification. Barron's delivery information simply indicates that delivered goods have been received; that delivery information does not indicate the physical location at which the goods were received. Moreover, since the DIAD cannot be used to identify the physical location of the goods, it cannot record a physical location of those goods.

Consequently, one cannot logically conclude that it would be obvious to compare a physical location scanned by a DIAD with anything when the DIAD is not capable of being used to identify a physical location in the first place. The Examiner's rejections of Claims 6 and 12 are improper as the Examiner has failed to establish a *prima facia* case for obviousness.

Claims 4-5, and 13, 14, 17-26: The Examiner rejected Claims 4-5, 7-8, and 13-26 under §103 over the prior art references the Examiner cited in support of the rejection of Claims 1-3 and 9-12 in view of USPN 5,319,374 issued to Desai and USPN 5,917,434 issued to Murphy.

Claims 4 and 5 depend from Claim 1 and include all the limitation of that base claim. For the same reasons the rejection of Claim 1 is improper, so are the rejections of Claims 4 and 5.

Claims 7 and 8 were previously cancelled.

Claims 13 and 14 depend from Claim 9 and include all the limitation of that base claim. For the same reasons the rejection of Claim 9 is improper, so are the rejections of Claims 13 and 14.

Claims 15 and 16 were previously cancelled.

Claim 17 is directed to a system for verifying delivery of goods to a specified location comprising:

1. a ticket delivered with the goods, the ticket containing information relating to the goods;
2. a reader operable to read the ticket upon delivery of the goods; and
3. a locator in communication with the reader, the locator operable to acquire from a positioning service a physical location of the goods as the reader reads the ticket.

Rejecting Claim 17, the Examiner states that "the same rejection to claims 1-3 and 9-11 applies." While not relevant to Claim 17, The Examiner states that Barron does not teach identifying and recording a universal time. It appears that the Examiner's rejection of Claim 17 is based solely in Barron. It is confusing as to why the Examiner rejected Claim 17 under §103. Nonetheless, nothing in Barron describes or suggests a locator in communication with a reader where the locator is operable to acquire from a positioning service a physical location of the goods as the reader reads a ticket delivered with the goods as required by Claim 17.

For at least these reasons the Examiner has failed to establish a *prima facia* case for obviousness with respect to Claim 17. Claims 18-24 each depend at least indirectly from Claim 17. For the same reasons the rejection of Claim 17 is

improper, so are the rejections of Claims 18-24.

Moreover, Claim 20 depends from Claim 17 and adds an element requiring that at least some of the information contained in the ticket represent the specified location and that the system also include a comparator in communication with the reader and the position locator, the comparator operable to compare the physical location with the specified location and to issue an alert indicating discrepancies.

Rejecting Claim 20 the Examiner states that "the same rejection to claims 1-3 and 9-11 applies." As noted above with Claim 6, nothing in Barron teaches or describes a comparator in communication with the reader and the position locator where the comparator operable to compare the physical location determined by the locator with a specified location indicated by the ticket and to issue an alert indicating discrepancies as required by Claim 20. For at least these additional reasons, the Examiner has failed to establish a *prima facie case* for obviousness with respect to Claim 20.

Claim 25 is directed to a system for verifying delivery of goods to a specified location and includes the following combination of elements.

1. a ticket delivered with the goods, the ticket containing information goods data; and
2. a reader operable to read the ticket upon delivery of the goods;
3. a position locator in communication with the reader operable to acquire from a positioning service a physical location of the goods as the reader reads the ticket;
4. a time service in communication with the reader, the time service operable to identify a universal time as the reader reads the ticket; and
5. a recorder in communication with the reader, position locator and time service, the recorder operable to generate a delivery record associating data representing the physical location of the goods and the universal time with information read from the ticket.

Rejecting Claim 25, the Examiner states that "the same rejection to claims 1-3 and 9-11 applies." Nothing in Barron describes or suggests a position locator in

communication with a reader where the locator is operable to acquire from a positioning service a physical location of the goods as the reader reads a ticket delivered with the goods as required by claim 25. For at least these reasons the Examiner has failed to establish a *prima facia* case for obviousness with respect to Claim 25.

Claim 26 depends from Claim 25. For the same reasons the rejection of Claim 25 is improper, so is the rejection of Claim 26. Moreover, Claim 26 adds an element requiring that at least some of the information contained in the ticket represent the specified location and that the system also include a comparator in communication with the reader and the position locator, the comparator being operable to compare the physical location with the specified location and to issue an alert indicating discrepancies. As noted above with Claims 6 and 20, nothing in Barron teaches or describes a comparator in communication with the reader and the position locator where the comparator operable to compare the physical location determined by the locator with a specified location indicated by the ticket and to issue an alert indicating discrepancies as required by Claim 26. For at least these additional reasons, the Examiner has failed to establish a *prima facia* case for obviousness with respect to Claim 26.

CONCLUSION

In view of the foregoing remarks, the Applicants respectfully requests that the Examiner reconsider and withdraw the rejection. The Applicants also submit that the pending claims are in condition for allowance. Consequently, early and favorable action allowing these claims and passing the application to issue is earnestly solicited. The foregoing is believed to be a complete response to the outstanding Office Action.

Respectfully submitted,
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By



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